

# European Organizations and the Governance of Ethno-cultural Diversity after the Cold War: The Yugoslav “Laboratory”

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*The post-Cold War period to date has witnessed renewed international and especially European preoccupation with issues pertaining to ethno-cultural diversity and the challenges for governance arising from these issues. This article discusses the shift that has occurred in support of national minority rights in Europe and why European organizations have become more concerned with these rights after the Cold War. It examines some of the major policy initiatives adopted by European organizations in response to the nearly twenty-five-year long Yugoslav crisis and what these initiatives reveal about new (and old) thinking within these organizations with respect to national minority rights and the management of ethno-cultural diversity more generally. It also discusses the consequences of these initiatives for minority rights protection and some of their broader implications for European policy in the future.*

## INTRODUCTION

The post-Cold War period to date has witnessed renewed international preoccupation with issues pertaining to ethno-cultural diversity and the challenges for governance arising from these issues. This trend has been especially manifest in Europe—among individual states but even more so, in some policy areas, among the various membership organizations that these states comprise.<sup>1</sup> The Council of Europe (CoE), the Organization for Security and Co-operation in Europe (OSCE), the North Atlantic Treaty Organization (NATO) and the European Union (EU) in this period have all found themselves concerned with a wide range of questions—directly and indirectly—in relation to ethno-cultural diversity and, in particular, national minority

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rights. Engagement with these questions, in turn, has generated a raft of initiatives, resulting in the elaboration and adoption of new norms, laws and directives and the establishment of new instruments and institutions, such as the OSCE's High Commissioner on National Minorities, the EU's Stability Pact for South Eastern Europe and the CoE's European Commission for Democracy through Law (Venice Commission).

This article discusses how thinking about the governance of ethno-cultural diversity—and issues of national minority rights in particular—has evolved within European organizations with the end of the Cold War. It concentrates on European initiatives with respect to Yugoslavia, beginning with the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY) in 1991, with the aim of viewing these initiatives more broadly as constitutive of the emerging European minority rights regime. There are two reasons why Yugoslavia merits attention. First, the outbreak of ethno-nationalist violence in Yugoslavia bears considerable responsibility for the intensification of interest in the plight of national minorities in Europe after the Cold War, continuing to this day. The wars of Yugoslav dissolution are not solely responsible for generating this concern, of course, but arguably no single region on the continent has spurred the production of as many initiatives in the area of minority rights protection as the former Yugoslavia. Indeed, the former Yugoslavia has become a veritable laboratory for innovation and experimentation with regard to minority rights. Second, although these initiatives have been conceived in response to a particular set of circumstances, the norms that inform them and the precedents that these policies represent have implications for the governance of ethno-cultural diversity in Europe more broadly. Thus while Yugoslavia is in many respects unique in the treatment it has received, and many of the measures that have been adopted in

reaction to the crisis there may not be transferable, it is also true that, as Roland Dumas, the then French foreign minister, observed presciently in July 1991: “Tomorrow what we have done for Yugoslavia would be applied to other cases.”<sup>2</sup>

The first section of this article discusses the shift that has occurred in support of national minority rights in Europe and why European organizations have become more concerned with these rights after the Cold War. The second section examines some of the major policy initiatives adopted by European organizations in response to the nearly twenty-five-year long Yugoslav crisis and what these initiatives reveal about new (and old) thinking within these organizations with respect to national minority rights and ethno-cultural diversity more generally. The third section discusses the consequences of these initiatives for minority rights protection and some of the broader implications of these initiatives for European policy in the future.

Three principal arguments underpin this analysis. First, the shift in attitude towards national minority rights among the organizations concerned is in large part a consequence of the securitization of minority rights in this period. In contrast to scholars such as Will Kymlicka, who use the term “securitization” to refer to the social construction of minority rights as a security issue,<sup>3</sup> I am using the term to refer to the process by which minority rights have come to be viewed *instrumentally* in relation to national and regional security concerns arising from the perceived threats (actual and potential) posed by ethno-nationalist conflict. Securitization in this sense of the term is consistent with observable trends in other policy areas, notably overseas development assistance following the terrorist attacks of 9/11.<sup>4</sup>

Second, it has been observed that different organizations “all have quite different mandates for addressing issues of ethnic diversity, different interpretations of the causes and remedies for...conflict, and quite different stakes in the outcomes.”<sup>5</sup>

That is true, too, for the principal European organizations.<sup>6</sup> And, yet, it is argued here, despite these differences and the fact that the European response to the Yugoslav crisis has been characterized by considerable division among the leading states involved (notably Germany, Britain and France), the engagement of the European organizations has largely been driven by common goals and strategies informed by a shared set of concerns.

Third, despite these shared concerns and the fact that there has been more policy harmony than discord among the relevant organizations, no broad strategic view of national minority rights has governed the design and execution of initiatives in this region, in contrast with, say, the concomitant efforts by the Council of Europe and other intergovernmental bodies to elaborate a European standard for national minority rights from a human rights standpoint. As a consequence, policy initiatives in relation to minorities in the former Yugoslavia have often been more *ad hoc* than otherwise. While this in itself may not be a bad thing, it has sometimes meant that insufficient thought has been given to the broader implications of particular policy choices.

## THE “SECOND WAVE” OF MINORITY RIGHTS IN EUROPE

It is clear that the European community is more receptive today to the promotion of collective minority rights—national or otherwise—than it has been at any other time since the end of the First World War.<sup>7</sup> While it is difficult to deny that an important shift has occurred, this new disposition should be looked at and analysed from the dual perspectives of continuity and change. Europe has a long history of engagement with questions of ethno-cultural diversity within its boundaries, and to some extent initiatives in this arena since the end of the Cold War can be said to represent

continuity with the past. Questions about the rights (and obligations) of immigrants, efforts to promote and protect minority languages and attempts at the resolution of conflicts of an ethno-political character, for instance, are by no means alien to European experience prior to the end of the Cold War. Moreover, the EU has long seen itself as being, among other things, a “community of values” in which diversity—and, by extension, pluralism and tolerance—occupy a central place.<sup>8</sup> This normative perspective has informed EU policy-making across a broad range of issue areas and has had palpable consequences for the diffusion of multiculturalism and the promotion of minority rights within EU member states but especially in the wider European region.

One must be careful, however, not to overstate this continuity. After all, where initiatives have been undertaken to address minority rights concerns in Europe (and elsewhere) during the Cold War, these have largely been unilateral or bilateral initiatives—that is, by the states directly affected—without major involvement of either the international or the European community. Notable exceptions are the UN General Assembly “Fate of Minorities” resolution (1948);<sup>9</sup> the South Tyrol question (1960);<sup>10</sup> Article 27 of the International Covenant on Civil and Political Rights (1966)<sup>11</sup> and the Helsinki Final Act (1975).<sup>12</sup> But these exceptions, significant though they were, did little to put minority rights in Europe on a firm footing. Thus when the idea of a European charter of minority rights was first tabled in the European Parliament in the 1980s, the proposal attracted very little official support; indeed, it enjoyed limited academic interest at best.<sup>13</sup>

The real milestones in the development of major European instruments of minority rights protection in the past sixty years have all occurred in the post-Cold War period, including but not limited to the Council of Europe’s European Charter for

Regional or Minority Languages (1992)<sup>14</sup> and its Framework Convention for the Protection of National Minorities (1994);<sup>15</sup> the European Union's accession criteria (1993)<sup>16</sup> and its Pact on Stability in Europe (1995);<sup>17</sup> NATO's "Partnership for Peace" programme (1994)<sup>18</sup> and the CSCE's Copenhagen Document (1990)<sup>19</sup> and Geneva Document (1991)<sup>20</sup> and the OSCE High Commissioner on National Minorities' recommendations and guidelines on education rights (1996),<sup>21</sup> linguistic rights (1998),<sup>22</sup> the effective participation of national minorities in public life (1999),<sup>23</sup> the use of minority languages in broadcast media (2003),<sup>24</sup> policing in multi-ethnic societies (2006),<sup>25</sup> national minorities in inter-state relations (2006)<sup>26</sup> and the integration of diverse societies (2012).<sup>27</sup> These initiatives are not of equal significance—some are merely recommendatory; others represent a reaffirmation of standards articulated elsewhere—but they are no less important for the broad consensus in support of collective minority rights that they reflect.

What explains this shift? The simple answer is that it has its origins in the threat, and the actual outbreak, of ethno-national conflict in Europe with the Cold War's end and the belief that the promotion of national minority rights could help to prevent, contain and resolve these conflicts. Even before the eruption of violence in Yugoslavia in June 1991, there had been fighting between Armenians and Azerbaijanis over the disputed enclave of Nagorno-Karabakh, between Georgians and Abkhaz over Abkhazia and between Moldovans and Russians in the Dniester region of Moldova.<sup>28</sup> Meanwhile the potential for conflict was looming over Romania, Slovakia and the Baltic states, where tensions were high between the national majority and minority populations in each case. At the height of the Cold War one could scarcely have imagined conflict between and within the "fraternal republics" of the Soviet Union;<sup>29</sup> now such conflict was rife. There was growing realization among

European states that these conflicts and tensions could not be ignored and that while the causes were many, the plight of national minorities was at the centre of them all. The Defence Committee of the UK House of Commons warned in July 1990, only seven months after the fall of the Berlin Wall: “As the threat on the Central Front recedes, the possibility of regional or national conflicts upsetting European stability comes into sharper focus.”<sup>30</sup> It is easy to forget just how novel the threat of violent conflict arising from national minority disputes was at the time.

The OSCE (then CSCE) offered the first institutional response to these then largely emerging challenges. At its June 1990 meeting in Copenhagen, participating states agreed a catalogue of “human dimension” commitments whose provisions for strengthening the respect for, and enjoyment of, human rights included ten paragraphs concerned with the protection and promotion of the rights of persons belonging to national minorities. The link between respect for human rights and fundamental freedoms, on the one hand, and the maintenance of peace and security, on the other, has of course been a hallmark of the Helsinki process since its inception, and this link was reaffirmed in the Copenhagen Document. What was new was the extension of human rights to embrace national minority rights, whose contribution to peace and stability the Copenhagen Document also acknowledged explicitly.<sup>31</sup> Noteworthy, too, was the Document’s recognition of special measures that might be taken by states to promote (and not merely protect) minority identity by establishing local autonomous administrations “corresponding to the specific historical and territorial circumstances of such minorities.”<sup>32</sup> Autonomy arrangements for national minorities would be advocated and employed widely in Europe in subsequent years in an effort to prevent or quell ethno-national unrest. However, proposals for autonomy would in some cases meet with resistance from the states concerned because of anxieties about the potentially

fissiparous tendencies inherent in such arrangements that could threaten the territorial integrity of these states. For this reason autonomy arrangements were not the only or even always the preferred response to national minority disputes. Power sharing and other non-territorial solutions would often be favoured instead.<sup>33</sup>

The CSCE Copenhagen Document would serve as the inspiration for the Council of Europe's Framework Convention for the Protection of National Minorities, which came into force in 1998.<sup>34</sup> This, too, emerged partly in response to concerns about "grave minority problems," as the Council's Parliamentary Assembly described the situation—problems that were threatening peace and stability on the continent. The Assembly had called repeatedly for action to deal with these problems, including measures to protect the rights of persons belonging to national minorities.<sup>35</sup> Although the Framework Convention represented a new direction for the Council, the protection of national minorities was consistent with its statutory mission, and together with the 1993 Vienna Declaration would receive explicit affirmation as an "essential element of stability."<sup>36</sup>

The Framework Convention and other related instruments, including the UN Declaration on the Rights of Minorities, belong to the family of standard-setting initiatives that seek the articulation of general principles and, possibly, their transformation into legally binding obligations. A second, parallel track of activity in this period can also be identified: institutional responses to challenges to stability and security that have arisen from particular crises, actual or prospective, associated with issues of ethno-cultural diversity. Although these institutional responses have been reactions to specific sets of circumstances, they have contributed to the articulation and establishment of general norms as well.



The shift in attitude that has resulted in greater European—and, to a lesser extent, international—willingness to strengthen minority rights is thus hard to deny. Will Kymlicka attributes this shift to the convergence of two factors: fear and hope—“fear of the spread of ethnic conflict after the collapse of Communism, and a hope for the possibility of a viable liberal-democratic form of multiculturalism.”<sup>37</sup> The fear, discussed above, was not by itself sufficient in Kymlicka’s view to prompt European statesmen and women to seek the expansion of a minority rights regime. That expansion also required a belief in the liberal ideals of multiculturalism—in the prospect of diverse societies achieving or maintaining stability through the inculcation of tolerance and the accommodation of difference—that was beginning to gain ground in Western societies especially. This was indeed the case but closer inspection of the positive side of the equation reveals that the hope did not always run very deep. For while it is true that European states were loath to consider “illiberal” measures—the partitioning of states, for instance, or the “voluntary transfer” of populations<sup>38</sup>—it is also true that the measures that were adopted sometimes looked more like acts of “face-saving” liberalism.

Consider the impetus behind international efforts to re-establish mixed ethnic communities in war-torn Croatia, Bosnia and Herzegovina and Kosovo as part of the larger effort to return refugees and internally displaced persons in those territories. In these and other conflict-affected territories, the international community has invested enormous resources in the pursuit of this goal.<sup>39</sup> The drive to promote returns is rooted fundamentally in respect for basic human rights, including the right to return to one’s “homes of origin,” and multi-ethnicity is the natural outcome of a policy predicated on those rights in formerly heterogeneous societies.<sup>40</sup> But multi-ethnicity has also been seen to be important for instrumental reasons: a multi-ethnic Sarajevo,

for instance, was considered by the Peace Implementation Council (PIC), which includes the leading European powers, to be “central to the implementation of the [Dayton] Peace Agreement.”<sup>41</sup> Why? A largely mono-ethnic Sarajevo, the PIC thought, would be “impaired” in its capacity to function as the capital city of a multi-ethnic state. In these same territories, however, multi-ethnicity has also been an important goal for another generally unstated reason: homogeneity would have been tantamount to an admission of failure on the part of the European community—the failure to prevent the triumph of militant, exclusivist forms of nationalism that have had as their goal the establishment of ethnically pure states or territories. This is why, in part, it has been anathema to question the goal of re-establishing multi-ethnicity, notwithstanding the elusiveness or even the dubious soundness of the goal in some cases. (Restored mixed communities have not always proved to be particularly stable communities after the war and their minority populations have not always felt secure.)<sup>42</sup> While there has been some recognition of this difficulty, the goal of restoring multi-ethnicity has not been abandoned.<sup>43</sup> Hope, in this case and others, however, does not necessarily reflect strong optimism about the prospects for establishing a viable multi-ethnic/multi-cultural society but, rather, a reluctance to accept the implications of the failure to do so.

## EUROPE AND THE YUGOSLAV “LABORATORY”

As the foregoing suggests, the former Yugoslavia has been fertile ground for thinking and experimentation by European (and other) organizations in relation to the governance of ethno-national diversity and in this sense can be seen as a social and political “laboratory.” Much has been written about European responses to crises in the former Yugoslavia and I will not rehearse that narrative here.<sup>44</sup> Instead, the

following discussion will highlight a few of the major initiatives that offer a window on the thinking within European organizations about these questions.

*Recognition and minority rights.* The disintegration of Yugoslavia in 1991 confronted Europe with a major challenge to stability that involved fundamental issues of national minority rights. The assertions of statehood by the Yugoslav republics seeking independence threatened the national minorities within those territories. The European Community's response to this challenge was to seek to secure adequate guarantees for the rights of these minorities by the new state authorities in an effort to undercut one of the presumed causes of the violent conflict: ethnic insecurity.<sup>45</sup> The EC's Arbitration Commission (the "Badinter Commission") had already established that national minority groups within the emerging states were entitled to "all the rights concerned to minorities and ethnic groups under international law"—a rather vague but nevertheless important observation.<sup>46</sup> The EC went further, however, and insisted that in exchange for recognition by EC member states, the Yugoslav republics seeking independence would have to accept the provisions pertaining to national and ethnic minorities that were contained in the draft Convention under consideration at the time by the Conference on Yugoslavia chaired by Lord Carrington.<sup>47</sup> The boldest of these provisions concerned minority populations who constituted a majority in various geographic areas. In those areas, the new state authorities were required to establish a "special status" that would provide for: the right of minorities to have and display national emblems; a second nationality alongside the nationality of the republic; an educational system that "respects the values and needs" of the group; and, most important, a legislative body, an administrative structure (including a regional police force) and a judiciary responsible

for “matters concerning the area.” There were also provisions for international monitoring of these arrangements.<sup>48</sup>

The EC had a model in mind for the “special status”: the extensive autonomy arrangements that had been negotiated for the Alto Adige/South Tyrol area of northern Italy.<sup>49</sup> South Tyrol had been ceded by Austria to Italy after the First World War but, because of its large German-speaking population, was to be a seat of unrest and a source of tension between the two countries for the next seven decades.<sup>50</sup> Under the autonomy arrangements (and further constitutional reforms adopted in 2001), the province enjoys a large measure of control over its own fiscal, economic, social, cultural and educational affairs.<sup>51</sup> Significantly, the province also retains a high proportion of the income tax generated within it, which, because of its prosperity, is quite considerable. The German language enjoys equal status with Italian within the province (there are special provisions for the Ladin-speaking population as well), allowing individuals to request that all court and local administrative proceedings be carried out in their native tongue. The province also has the right to contest national laws before the Italian Constitutional Court that are thought to encroach on the province’s autonomy.

Although the EC’s “special status” arrangements differ in important respects from the package of special rights that the Italian authorities granted the German-speaking community in South Tyrol, there is nevertheless a strong correspondence between the two. Both are predicated on the notion that an ethnic or national group may require special protections that general principles of human rights, with their emphasis on individual rights and non-discrimination, may be insufficient to ensure.<sup>52</sup> South Tyrol has continued to be a source of inspiration for mediation efforts in the Balkan region: in 1997, two years before the NATO military campaign against Serbia/Yugoslavia, the Bertelsmann Foundation and the Centre for Applied Policy Research in Munich

proposed similar autonomy arrangements for the Kosovar Albanians as the basis for a solution to the conflict in Kosovo.<sup>53</sup> And autonomy arrangements for the Serb minority in newly independent Kosovo were an integral part of the EU-backed “Comprehensive Proposal for the Kosovo Status Settlement” (also known as the Ahtisaari Plan) in 2007,<sup>54</sup> which the Kosovo authorities affirmed with their unilateral declaration of independence on 17 February 2008.<sup>55</sup> By insisting on respect for minority rights as a condition for diplomatic recognition, the EC has arguably given new meaning to what sovereign statehood means—with regard to new states emerging in Europe at least. Sovereignty in this context entails, *inter alia*, the assumption of particular responsibilities in the treatment of a state’s national minorities.

*Democratization and minority rights.* If respect for the rights of national minorities has been seen to be an essential factor for peace and stability, it has also been recognised by the CoE, the OSCE and other European bodies to be critical for democratization, which in turn is considered to be necessary to ensure peaceful relations within ethnically diverse societies. As observed in the OSCE Lund Recommendations (1999): “Effective participation of national minorities in public life is an essential component of a peaceful and democratic society. Experience in Europe and elsewhere has shown that, in order to promote such participation, governments often need to establish specific arrangements for national minorities.”<sup>56</sup> Minority rights have thus received a further boost by European and others’ efforts to promote democratization in the region of the former Yugoslavia, especially in those territories that have been subject to international administration. These efforts have resulted in the incorporation of international and regional minority rights conventions into the constitutions of these territories, the articulation of additional minority rights,

guaranteed representation of minorities in elected and appointed offices and support for political party development, among other measures.<sup>57</sup> Together these measures represent an extraordinary effort to ensure the protection of national minority rights and interests.

In practice, however, it has been seen that the participation of national minorities in public life in an organized fashion (e.g., as political parties) can also be destabilizing, especially for fragile democracies emerging from violent ethno-nationalist conflict.<sup>58</sup> For that reason, European organizations have sought at one and the same time to promote *and* to inhibit the political mobilization of national minorities. In the case of Bosnia and Herzegovina (BiH), freedom of expression on the part of nationalist parties has at times been subject to severe restrictions in the interest of creating a “politically neutral environment” for the conduct of elections. On the eve of BiH’s first elections in September 1996, for example, the OSCE’s Elections Appeals Sub-Commission (EASC) issued an advisory opinion that proscribed any statements by parties or their representatives that could be construed as expressions of support for the territorial separation and independence of part of the country or that referred to part of the country as sovereign territory. On the basis of this ruling the EASC fined the Serbian Democratic Party (SDS), led by Radovan Karadžić, \$50,000 for having “continually stressed the substantial autonomy granted to Republika Srpska in the [Dayton] General Framework Agreement, to the total exclusion of any reference to the unity of Bosnia and Herzegovina.”<sup>59</sup>

While the Dayton Agreement sought to protect the rights and interests of the “constituent peoples” of Bosnia and Herzegovina—Serbs, Croats and Bosniacs (Muslims)—it would be wrong to regard these groups as the only ethnic or national minorities in post-war BiH.<sup>60</sup> In many respects it is the “Others,” as they are referred

to in the Bosnian Constitution—Jews, Roma and other national minorities together with those who do not declare affiliation with any ethnic group—who correspond more closely to vulnerable minorities elsewhere. Here the situation has at times been even more parlous. Notwithstanding the fact that the Bosnian Constitution incorporates the European Framework Convention for the Protection of National Minorities, these minority groups are formally prevented from participating equally in elections for some elected offices, notably the presidency and two-thirds of the seats in the House of Peoples (the lower house), because these offices are reserved for constituent peoples. Moreover, Bosniacs, Croats and Serbs within the presidency and the Parliamentary Assembly have the right to veto any legislation that is thought to be “destructive of a vital interest” of their communities.<sup>61</sup> The ethnic calculus that underpins these arrangements is one of a number of confidence-building measures designed to ensure that power is shared among the three principal (and previously warring) national groups and that these groups are protected against encroachments on their vital interests. But because these constitutional provisions have the effect of limiting effective participation of minority groups in public life, they arguably violate one of the cardinal principles of minority rights protection, as reflected in the 2009 decision of the European Court of Human Rights (*Sejdić and Finci v. Bosnia and Herzegovina*), which found that these provisions “lacked an objective and reasonable justification” and breached the European Convention of Human Rights and its protocols.<sup>62</sup> As of June 2014, Bosnian Serbs, Croats and Bosniacs had failed to accommodate the ECHR ruling by revising their constitutions accordingly.

*Accession and minority rights.* Respect for minority rights has also become a key requirement for accession to the European Union. The European Council, meeting in

Copenhagen in June 1993, agreed that candidates for membership in the EU would be required to satisfy various conditions, including evidence that the candidate country has achieved respect for and protection of minorities.<sup>63</sup> The requirement was premised on the belief that by insisting on respect for minority rights, the EU could help to prevent violent ethnic conflict. Among the former Yugoslav republics, thus far only Slovenia and Croatia have joined the EU (in 2004 and 2013 respectively). Meanwhile, Macedonia, Serbia, and Montenegro have been granted candidate status, and Bosnia and Herzegovina and Kosovo have been designated “potential candidate” countries.

As with conditional recognition, the accession process is predicated on the logic of “asymmetric interdependence.”<sup>64</sup> By this logic, the EU depends less on the inclusion of the candidate countries for its well-being than these countries depend on their incorporation into the EU for their prosperity. The determination of the candidate countries to join the EU thus provides the EU with leverage over these countries that Brussels can use to promote structural and other reforms, including in the area of minority rights. It has achieved this, with varying degrees of success, in relation to Slovenia, Croatia and Macedonia, among the new states emerging from the former Yugoslavia. All three states, as candidates, have either amended their constitutions or adopted national legislation to give effect, first to the relevant minority rights provisions of the EC’s draft Convention referred to above, and subsequently to the minority rights elements of the European Commission’s “Copenhagen criteria.” While one must be careful not to overstate the EU’s influence in this regard—the 1974 constitution of the Socialist Republic of Slovenia, for instance, already contained important provisions for the protection of the Italian and Hungarian minorities;<sup>65</sup> moreover, some states (notably Croatia) have been reluctant to implement reforms—it is clear that the three candidate countries have taken



meaningful steps towards instituting minority rights protections in response to pressures from the EU. In its 1997 Opinion regarding Slovenia's candidacy, the European Commission concluded that Slovenia had fulfilled the political criteria for accession, including with respect to the protection of minorities, notwithstanding the Commission's acknowledgement of some continued weaknesses in legislation in this area (especially as regards the Roma).<sup>66</sup> Similarly, the European Commission's monitoring reports on Croatia prior to its accession in 2013 showed steady progress towards fulfilment of the political criteria, including in relation to minority rights, despite outstanding problems.<sup>67</sup> As David Galbreath and Joanne McEvoy observe, "The fact that all of the candidate countries have ensured a certain standard of national minority protection confirms the importance of the EU, the OSCE and the Council of Europe for affecting policy change in this context."<sup>68</sup>

### ONE STEP FORWARD, TWO STEPS BACK?

The foregoing represents only a partial inventory of European initiatives towards the former Yugoslavia in the area of minority rights protection. However, on the basis of even this limited overview, it is possible to make some summary observations about the shift in thinking within European organizations with regard to the governance of ethno-cultural diversity and, in particular, minority rights.

First, the trajectory of thinking about national minority rights is quite clear, as are the broad contours of an explanation for it. There has been a significant shift in thinking in Europe in favour of recognizing and strengthening collective minority rights in the region. That shift has largely been in response to the emergence of ethno-nationalist threats on the continent after the Cold War. Alongside recognition of the security dimensions of minority rights, there has also been recognition of the

importance of minority rights for democracy, although the relationship between the two has not been as fully articulated.

Yet while there has been a general policy convergence in this area among the relevant organizations as a consequence of this shift in thinking, there have been important differences among states with regard to interests and motivations. “Kin-states,” for instance, have often shown a particular interest in the minority communities outside their boundaries. The five states that proposed a “code of rights” for minorities at the CSCE’s Copenhagen summit in June 1990 were the so-called Pentagonale group: Hungary, Czechoslovakia, Yugoslavia, Austria and Italy. Canada, West Germany and the Netherlands also supported the proposal and at the same meeting suggested an amendment that would grant national minorities the right to the establishment of “autonomous administrations” in certain circumstances.<sup>69</sup> Many of these states are kin-states, some of whom have had longstanding concerns about the treatment of their kin in neighbouring countries;<sup>70</sup> others are home to significant minority (or diaspora) populations themselves.<sup>71</sup> In the face of growing ethno-nationalist tensions and conflict, these states especially have favoured the adoption of measures that would afford national minorities special protection. Not all European states have welcomed the renewed interest in the promotion of collective minority rights, however, and efforts to operationalise this interest have not always been successful as a result. There was little support, for instance, for the British proposal made at the Copenhagen 1990 summit to establish a CSCE centre for the mediation of ethnic conflicts.<sup>72</sup>

Second, while there has been a meaningful shift in thinking about minority rights within Europe since the end of the Cold War, this development is in some ways also consistent with past thinking and practice. Concerns about, and support for,

collective minority rights were not entirely extinguished by the experiences of Europe in the inter-war and Cold War periods, even if some states now considered the idea of collective rights to be “irrelevant.”<sup>73</sup> Hungary and Germany, for instance, continued to be advocates of collective guarantees. And some of the approaches that were taken to the challenge of managing ethno-national conflict after the Cold War, notably “reverse discrimination” and autonomy regimes, were also pursued during the Cold War—evident in the settlement of the South Tyrol question and the German-Danish agreements on the mutual protection of minorities, among other cases.

Third, by insisting on respect for minority rights as a condition for diplomatic recognition and accession to the EU, the European Union has given new meaning to “sovereignty as responsibility”—in the European context, at least.<sup>74</sup> The EU has also given new meaning to what the community of European states represents. John Stuart Mill, writing in 1861, had expressed a general pessimism about the capacity of pluralistic societies for democratic governance: “Free institutions are next to impossible in a country made up of different nationalities,” Mill wrote in *Representative Government*. “Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion, necessary to the working of representative government, cannot exist.”<sup>75</sup> In its response to the collapse of communist Europe and the emergence of new states in its wake, the European Union has taken a very different view of pluralistic societies in relation to “free institutions.” Not only is it possible for such societies to function democratically, the EU maintains, but a democratic Europe requires pluralism. For where multinational societies predominate—as they do in much of Europe—states wishing to achieve the relative homogeneity that Mill’s logic seems to recommend can only do so through the elimination of ethnic differences. The use of violent means for such a purpose,

including the forcible redrawing of boundaries, however, is anathema. Even non-coercive instruments, such as assimilation, are problematic in an era when it is accepted that national minorities are entitled to preserve their distinctiveness consistent with the right to self-determination and broadening conceptions of human rights.

While there can be no doubt that European policy has contributed to the further entrenchment of minority rights norms in international society, it is also true that the failure to apply these norms in a consistent manner within Europe threatens to weaken their force.<sup>76</sup> The Framework Convention for the Protection of National Minorities is unusual insofar as the monitoring of its implementation pertains to all contracting parties.<sup>77</sup> By contrast, the European Commission evaluates the treatment of national minorities in candidate countries but established EU members are not subject to the same scrutiny. Indeed, a number of EU member states would arguably fail to meet the requirements for accession if they were to be judged by the same standards.<sup>78</sup> For that matter, once they have been admitted, candidate countries can backpedal on minority rights, as Slovakia has done with respect to its Roma and Hungarian minorities.<sup>79</sup> The OSCE also rarely concerns itself with the plight of national minorities in West European states. To paraphrase Milada Anna Vachudova, minority rights protection is one of the areas where the asymmetry of power between “old” and “new” Europe is in evidence because “new” Europe is required to meet goals that “old” Europe has not set for itself.<sup>80</sup> It may well prove to be difficult to sustain the shifts that have occurred in support of national minority rights if political elites in the “new” Europe perceive not only an asymmetry of power but also double standards at work.

## CONCLUSION

This article has discussed how thinking about the governance of ethno-cultural diversity—and issues of national minority rights more specifically—has evolved within European organizations with the end of the Cold War, spurred in part by the threat of ethno-political conflict, especially in the region of the former Yugoslavia. The former Yugoslavia, in turn, has served as fertile ground for thinking and experimentation by European (and other) organizations with regard to the management of ethno-national diversity, and in this sense can be viewed as a social and political “laboratory.” The laboratory experiments have been successful to the extent that they have contributed to the mitigation and prevention of violent ethnic conflict within the former Yugoslavia (and elsewhere in Europe), even if ethnic harmony in many cases remains an elusive goal. The successes, although limited, have nevertheless provided further support for the nascent European minority rights regime. How effective the regime can be ultimately in the protection of minority rights is an open question.

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## NOTES

<sup>1</sup> David J. Galbreath and Joanne McEvoy, *The European Minority Rights Regime: Towards a Theory of Regime Effectiveness* (Basingstoke, UK: Palgrave Macmillan, 2012), ch. 2.

<sup>2</sup> Cited in Alan Riding, “Conflict in Yugoslavia; European Community Freezes Arm Sales and Aid,” *New York Times* (6 July 1991).

<sup>3</sup> Will Kymlicka, “Justice and Security in the Accommodation of Minority Nationalism,” in Alain Dieckhoff, ed., *The Politics of Belonging: Nationalism, Liberalism and Pluralism* (Lanham, MD: Lexington, 2004), 127-54.

<sup>4</sup> See, for instance, Emmanuel Kwesi Aning, “Security, the War on Terror, and Official Development Assistance,” *Critical Studies on Terrorism* 3(1): 7-26 (2010).

<sup>5</sup> Jane Boulden and Will Kymlicka, “Introduction,” in Jane Boulden and Will Kymlicka, eds., *International Approaches to Governing Ethnic Diversity* (New York: Oxford University Press, forthcoming 2015).

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<sup>6</sup> David Galbreath and Joanne McEvoy, “European Organizations and Minority Rights in Europe: On Transforming the Securitization Dynamic,” *Security Dialogue* 43(3): 267-84 (2012).

<sup>7</sup> Will Kymlicka, *Multicultural Odysseys: Navigating the New International Politics of Diversity* (New York: Oxford University Press, 2007), 27-60; Patrick Thornberry and María Amor Martín Estébanez, *Minority Rights in Europe* (Strasbourg: Council of Europe Publishing, 2004), 7-10.

<sup>8</sup> John Richardson, “The European Union in the World—A Community of Values,” *Fordham International Law Journal* 26(1): 12-35 (2002). Richardson is the former ambassador of the European Commission to the United Nations.

<sup>9</sup> UN General Assembly Resolution A/Res/3/217/C, 10 Dec. 1948.

<sup>10</sup> UN General Assembly Resolution A/Res/1497 (XV), 31 Oct. 1960.

<sup>11</sup> International Covenant on Civil and Political Rights (adopted 16 Dec. 1966, entered into force 23 Mar. 1976), 999 UNTS 171.

<sup>12</sup> Conference on Security and Co-operation in Europe (CSCE): Final Act of Helsinki [better known as “Helsinki Final Act”], 1 August 1975, *Int’l Legal Materials* 14 (1975), 1292.

<sup>13</sup> Gabriel N. Toggenburg, “Minority Protection in a Supranational Context: Limits and Opportunities,” in Gabriel N. Toggenburg, ed., *Minority Protection and the Enlarged European Union: The Way Forward* (Budapest: Open Society Institute, 2004), 5.

<sup>14</sup> Council of Europe, *European Charter for Regional or Minority Languages*, 4 Nov. 1992, ETS No. 148.

<sup>15</sup> Council of Europe, *Framework Convention for the Protection of National Minorities*, 1 Feb. 1995, ETS No. 157.

<sup>16</sup> European Council in Copenhagen, “Conclusions of the Presidency,” 21-22 June 1993, SN 180/1/93.

<sup>17</sup> Pact on Stability in Europe, 21 March 1995, in Christopher Hill and Karen E. Smith, eds., *European Foreign Policy: Key Documents* (London: Routledge, 2000), 274-6.

<sup>18</sup> NATO, Partnership for Peace: Framework Document, 10-11 Jan. 1994.

<sup>19</sup> CSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, *Int’l Legal Materials* 29 (1990), 1305 [hereafter “Copenhagen Document”].

<sup>20</sup> CSCE, Report of the CSCE Meeting of Experts on National Minorities, Geneva, 19 July 1991.

<sup>21</sup> OSCE, Office of the High Commissioner on National Minorities, *The Hague Recommendations Regarding the Education Rights of National Minorities & Explanatory Note* (The Hague: Foundation on Inter-Ethnic Relations, 1996).

<sup>22</sup> OSCE High Commissioner on National Minorities, *The Oslo Recommendations Regarding the Linguistic Rights of National Minorities & Explanatory Note* (The Hague: OSCE High Commissioner on National Minorities, 1998).

<sup>23</sup> OSCE High Commissioner on National Minorities, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life*

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& Explanatory Note (The Hague: OSCE High Commissioner on National Minorities, 1999) [hereafter “Lund Recommendations”].

<sup>24</sup> OSCE High Commissioner on National Minorities, *Guidelines on the Use of Minority Languages in the Broadcast Media* (The Hague: OSCE High Commissioner on National Minorities, 2003).

<sup>25</sup> OSCE High Commissioner on National Minorities, *Recommendations on Policing in Multi-Ethnic Societies* (The Hague: OSCE High Commissioner on National Minorities, 2006).

<sup>26</sup> OSCE High Commissioner on National Minorities, *The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations & Explanatory Note* (The Hague: OSCE High Commissioner on National Minorities, 2008).

<sup>27</sup> OSCE High Commissioner on National Minorities, *Ljubljana Guidelines on Integration of Diverse Societies & Explanatory Note* (The Hague: OSCE High Commissioner on National Minorities, 2012).

<sup>28</sup> Michael E. Brown, ed., *The International Dimensions of Internal Conflict* (Cambridge, MA: MIT Press, 1996), 4-7.

<sup>29</sup> One notable exception was H el ene Carr ere d’Encausse whose *L’Empire  clat * (Paris: Flammarion, 1978) anticipated the resurgence of nationalist conflict in the Soviet Union.

<sup>30</sup> UK House of Commons, Defence Committee, Tenth Report, *Defence Implications of Recent Events*, H.C. Session 1989-90 (London: H.M. Stationery Office, 1990), xvi.

<sup>31</sup> Copenhagen Document, para. 30. Curiously, the OSCE’s Lund Recommendations observe that the “fundamental link” between national minority rights and peace and security was established with the 1975 Helsinki Final Act, thereby suggesting greater continuity with the past. A reading of the relevant sections of the Final Act (Principle VII), however, reveals that this claim is overstated: national minority rights are indeed discussed in the Final Act but in human rights terms only; it is the latter that are linked to peace and security.

<sup>32</sup> Copenhagen Document, para. 35.

<sup>33</sup> Ulrich Schneckener, “Models of Ethnic Conflict Regulation: the Politics of Recognition,” in Ulrich Schneckener and Stefan Wolff, eds., *Managing and Settling Ethnic Conflicts* (London: Hurst & Co., 2004), ch. 2.

<sup>34</sup> Walter Kemp, “The OSCE and the Management of Ethnopolitical Conflict,” in Marc Weller and Stefan Wolff, eds., *Institutions for the Management of Ethnopolitical Conflict in Central and Eastern Europe* (Strasbourg: Council of Europe, 2008), 129-47.

<sup>35</sup> Marc Scheuer, “The Council of Europe and the Issue of Ethno-political Conflicts,” in Weller and Wolff, eds., *Institutions for the Management of Ethnopolitical Conflict in Central and Eastern Europe*, 185-218. See, in particular, Recommendation 1134 (1990), adopted on 1 Oct. 1990, and Recommendation 1201 (1993), adopted on 1 Feb. 2003, calling for an additional protocol to the European Convention on Human Rights to protect the rights of minorities.

<sup>36</sup> Council of Europe, Committee of Ministers. Vienna Declaration. 9 Oct. 1993.

<sup>37</sup> Kymlicka, *Multicultural Odysseys*, 48.

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<sup>38</sup> One notable exception was the Netherlands, which soon after the warring began in Yugoslavia, proposed a “voluntary redrawing of internal borders” whose aim would be to “reduce the number of national minorities in every republic.” The proposition was opposed by all other member-states of the European Community at the time. See David Owen, *Balkan Odyssey* (New York: Harcourt and Brace, 1995), 31-33.

<sup>39</sup> Dana Landau, “International Normative Commitments to Multi-Ethnicity in Post-Conflict Kosovo” (MPhil Thesis, University of Oxford, 2011).

<sup>40</sup> The right to return to one’s home of origin is enshrined in the various peace settlements and/or UN Security Council resolutions for Eastern Slavonia (Croatia), Bosnia and Herzegovina and Kosovo. It represents a higher standard for the rights of the displaced than has often been recognized in the past. See Elizabeth M. Cousens and Charles K. Cater, *Toward Peace in Bosnia: Implementing the Dayton Accords* (Boulder, CO: Lynne Rienner, 2001), 72.

<sup>41</sup> Peace Implementation Council, “Bosnia and Herzegovina 1998: Self-sustaining Structures,” 10 Dec. 1997 (Bonn), Art. III(1)(g).

<sup>42</sup> Chaim Kaufmann, “Possible and Impossible Solutions to Ethnic Civil Wars,” *International Security* 20(4): 136-75 (Spring 1996).

<sup>43</sup> A glimpse of a possible exception was apparent in the announcement by Kosovo Force (KFOR) spokesperson Lieutenant Colonel Henning Philipps on 21 March 2000, soon after the establishment of the UN interim administration (UNMIK) on the territory: “The time of illusions is over. Our aim has been scaled down to peaceful coexistence and this we think we can achieve.” Quoted in “No More Hopes Pinned on Multi-Ethnic Society in Kosovo,” *UN Wire*, 21 Mar. 2000.

<sup>44</sup> See, most notably, Reneo Lukic and Allen Lynch, *Europe from the Balkans to the Urals: The Disintegration of Yugoslavia and the Soviet Union* (Oxford: Oxford University Press/SIPRI, 1996); James Gow, *Triumph of the Lack of Will: International Diplomacy and the Yugoslav War* (London: Hurst & Co, 1997); Elizabeth Pond, *Endgame in the Balkans: Regime Change, European Style* (Washington, DC: The Brookings Institution, 2006); Josip Glaurdić, *The Hour of Europe: Western Powers and the Breakup of Yugoslavia* (New Haven, CT: Yale University Press, 2011).

<sup>45</sup> Richard Caplan, *Europe and the Recognition of New States in Yugoslavia* (Cambridge: Cambridge University Press, 2007), ch. 1.

<sup>46</sup> Arbitration Commission, Conference on Yugoslavia, Opinion No. 2, 11 Jan. 1992, *Int’l Legal Materials* 31 (1992), 1497-9.

<sup>47</sup> European Council, “Declaration on Yugoslavia,” Extraordinary EPC Ministerial Meeting (Brussels), 16 Dec. 1991.

<sup>48</sup> Conference on Yugoslavia, Treaty Provisions for the Convention [4 Nov. 1991], Art. 2(5B).

<sup>49</sup> See Henry Wynaendts, *L’engrenage: Chroniques yougoslaves, juillet 1991-août 1992* (Paris: Denoël, 1993), 124; and Michael Libal, *Limits of Persuasion: Germany and the Yugoslav Crisis, 1991-1992* (Westport, CT: Praeger, 1997), 166. Wynaendts was deputy to Lord Carrington, chair of the Conference on Yugoslavia; Libal was the German Foreign Ministry desk officer for Yugoslavia at the time of the conference.



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<sup>50</sup> See Antony E. Alcock, *The History of the South Tyrol Question* (London: Michael Joseph, 1970); Mario Toscano, *Alto Adige—South Tyrol* (Baltimore, MD: The Johns Hopkins University Press, 1975).

<sup>51</sup> The “Autonomy Statute” of 1972 and associated legislation are contained in *Il nuovo Statuto di Autonomia* (Bolzano: Giunta provinciale di Bolzano, 2003).

<sup>52</sup> Charles Taylor, *Multiculturalism and “The Politics of Recognition”* (Princeton: Princeton University Press, 1992), 61.

<sup>53</sup> International Crisis Group, “Kosovo Spring,” *ICG Balkans Report* (20 Mar. 1998), 48-49.

<sup>54</sup> Comprehensive Proposal for the Kosovo Status Settlement (2 Feb. 2007), UN Doc. S/2007/168/Add.1, 26 Mar. 2007.

<sup>55</sup> Kosovo Declaration of Independence, available at [http://www.assembly-kosova.org/common/docs/Dek\\_Pav\\_e.pdf](http://www.assembly-kosova.org/common/docs/Dek_Pav_e.pdf), accessed 8 June 2014.

<sup>56</sup> OSCE Lund Recommendations, 7.

<sup>57</sup> See, for instance, *Constitution of Bosnia and Herzegovina* (Annex 4 of the *General Framework Agreement for Peace in Bosnia and Herzegovina*), notably Art. II.4 (non-discrimination), Art. IV.1 (House of Peoples), Art. IV.2 (House of Representatives), Art. V (Presidency) and Annex I (Additional Human Rights Agreements to be Applied in Bosnia and Herzegovina).

<sup>58</sup> For a discussion of some of the challenges of democratization for post-conflict societies, see Roland Paris, *At War’s End: Building Peace after Civil Conflict* (Cambridge: Cambridge University Press, 2004).

<sup>59</sup> EASC cited in David Chandler, *Bosnia: Faking Democracy after Dayton* (London: Pluto Press, 1999), 122.

<sup>60</sup> However, members of a constituent group who are in a numerical minority in a particular area in BiH—for instance, Croats and Bosniacs in Republika Srpska—arguably enjoy the protections afforded by the European Framework Convention for the Protection of National Minorities.

<sup>61</sup> *Constitution of Bosnia and Herzegovina*, Art. IV(3)(e).

<sup>62</sup> See European Court of Human Rights, *Case of Sejdić and Finci v. Bosnia and Herzegovina: Judgement*, Strasbourg, 22 Dec. 2009. Earlier, in 2000, the Constitutional Court of Bosnia and Herzegovina in its “Constituent Peoples’ Decision” had found provisions of the constitutions of both Republika Srpska and the Federation of Bosnia and Herzegovina that enshrined various ethnic guarantees for Serbs, Croats and Bosniacs to be unconstitutional. See Constitutional Court of Bosnia and Herzegovina, U 5/98 III (“Constituent Peoples’ Decision”), Sarajevo, 1 July 2000.

<sup>63</sup> “Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights *and respect for and protection of minorities...*” European Council, “Conclusions of the Presidency,” Copenhagen, 21-22 June 1993, SN 180/1/93 (emphasis added).

<sup>64</sup> Milada Anna Vachudova, *Europe Undivided: Democracy, Leverage and Integration after Communism* (Oxford: Oxford University Press, 2005), 109-10.

<sup>65</sup> Ksenija Šabec, *EUROREG Regions, Ethnic Minorities and European Integration: Policy report on the Italian minority in Slovenian Istria* (Ljubljana: University of Ljubljana Centre for Cultural and Religious Studies, 2006), 6-10.

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<sup>66</sup> European Commission, “Regular Report on Slovenia’s Progress Towards Accession,” COM(2002) 700 final, 9 Oct. 2002, 27-28.

<sup>67</sup> See, for instance, “Communication from the Commission to the European Parliament and the Council on the Main Findings of the Comprehensive Monitoring Report on Croatia’s state of preparedness for EU membership,” COM(2012) 601 final, 10 Oct. 2012, 4.

<sup>68</sup> Galbreath and McEvoy, “European Organizations and Minority Rights in Europe,” 279.

<sup>69</sup> Vojtech Mastny, *The Helsinki Process and the Reintegration of Europe, 1989-1991: Analysis and Documentation* (London: Pinter, 1992), 233-6.

<sup>70</sup> There was also concern that, with the new-found freedom of mobility after 1989, members of national minority groups would seek to migrate to those states where their ethnic kin formed the majority. See Jennifer Jackson Preece, *National Minorities and the European System* (Oxford: Oxford University Press, 1998), 44.

<sup>71</sup> *Ibid.*, 124-5.

<sup>72</sup> Mastny, *The Helsinki Process and the Reintegration of Europe*, 33.

<sup>73</sup> See, for instance, the statement of the Romanian delegate at the CSCE Meeting of Experts on National Minorities, Geneva, 11 July 1991, cited in *Ibid.*, 303-4.

<sup>74</sup> The term “sovereignty as responsibility” has its contemporary basis in late 20<sup>th</sup> century humanitarian efforts to curb forced migration and, more recently, mass atrocity crimes. See Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington, DC: The Brookings Institution, 2009), ch. 2.

<sup>75</sup> John Stuart Mill, “Representative Government,” in Gertrude Himmelfarb, ed., *Utilitarianism, Liberty, and Representative Government* (London: J. M. Dent & Sons, 1940 [1861]), 361.

<sup>76</sup> Michael Johns, “‘Do As I Say, Not As I Do’: The European Union, Eastern Europe and Minority Rights,” *East European Politics and Society* 17(4): 682-99 (2003).

<sup>77</sup> *Framework Convention for the Protection of National Minorities*, Art. 24.

<sup>78</sup> Johns, “‘Do As I Say, Not As I Do,’” 693-6.

<sup>79</sup> Malte Brosig, “The Challenge of Implementing Minority Rights in Central Eastern Europe,” *European Integration* 32(4): 393-411 (July 2010).

<sup>80</sup> Vachudova, *Europe Undivided*, 121-2.

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